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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,923	05/09/2001	Julian S. Taylor	SMQ-117/P6141	3713
959	7590	11/19/2004	EXAMINER	
LAHIVE & COCKFIELD, LLP. 28 STATE STREET BOSTON, MA 02109			NAHAR, QAMRUN	
			ART UNIT	PAPER NUMBER
			2124	

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/851,923	Applicant(s) TAYLOR, JULIAN S.	
	Examiner Qamrun Nahar	Art Unit 2124	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This action is in response to the amendment filed on 8/10/04.
2. The objection to the abstract is withdrawn in view of applicant's amendment.
3. The objections to the disclosure are withdrawn in view of applicant's amendment.
4. The objections to claims 15, 31, 33 and 51 are withdrawn in view of applicant's amendment.
5. The rejection under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention to claims 9, 13, 27, 31, 45, 49 and 58 is withdrawn in view of applicant's amendment.
6. The rejection under the judicially created doctrine of obviousness-type double patenting to claims 1-58 is withdrawn in view of filing a terminal disclaimer on 9/2/2004.
7. Claims 1, 8-9, 13, 15, 19, 26-27, 31, 33, 37, 44-45, 49, 51, 55 and 58 have been amended.
8. Claims 1-58 are pending.
9. Claims 1-58 stand finally rejected under 35 U.S.C. 102(b) as being anticipated by Bartoletti et al., "Secure Software Distribution System", 1997 (hereinafter "Bartoletti").

### ***Terminal Disclaimer***

10. The terminal disclaimer filed on 9/2/2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application No. 09/852113 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Response to Amendment***

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Bartoletti et al., “Secure Software Distribution System”, 1997 (hereinafter “Bartoletti”).

**Per Claim 1 (Amended):**

The Bartoletti publication discloses:

- **a method for applying a patch to a computer system, wherein the patch includes content to add to the computer** (“The Secure Software Distribution System (SSDS) will provide automated analysis, notification, distribution, and installation of security patches and related software to network-based computer systems in a vendor-independent fashion. SSDS will assist with the authentication of software by comparing the system’s objects with the patch’s objects.” SSDS will monitor vendors’ patch sites to determine when new patches are released and will upgrade system software on target systems automatically.” in pg. 1, abstract, lines 2-7)
- **determining at least one of installed hardware and software components on the computer; generating a computer object including configuration information on the determined**

**installed components; providing at least one patch including content to add to the computer, wherein each patch is capable of being associated with at least one realization, wherein each realization defines a state of the computer; for each realization, downloading a realization detector to the computer system, each realization detector determining from the configuration information in the computer object whether the state defined by the realization exists in the computer; writing data to the computer object indicating whether the state defined by the realization exists on the computer; and using the computer object to determine whether each patch is compatible with the installed components of the computer** (“To evaluate a system, the SSDS Server asks the SSDS Agent running on the target system what operating system, version, and architecture is running on the target. It then collects all of the patches from the patch spec database pertaining to this system’s operating system, version, and architecture. From these patch specifications a list of directories and files manipulated by the patch specifications is formed. The owner, access control list, and checksum (for files only) for each file or directory on the list is checked against the owner, access control list, and checksums of the respective directory or file on the target system. This check permits the SSDS Server to determine which patches are actually installed on the target system without relying on the system’s local database. From this information, the SSDS Server can determine which patches need to be installed on the target system in order to bring it up-to-date. ... The SSDS Agent software would be installed on all systems in the network.” in pg. 6, par. 2, lines 6-17; and pg. 7, par. 3, lines 6-7).

**Per Claim 2:**

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The Bartoletti publication discloses:

- wherein the patch content to add to the computer is capable of comprising one of: a new program; an upgrade to an installed program; a fix to an installed program; and documentation (pg. 4, par. 4, lines 1-7).

**Per Claim 3:**

The Bartoletti publication discloses:

- wherein one realization is capable of being dependent on another realization in the computer object further comprising: determining whether the realization is dependent on at least one base realization; and if the realization is dependent on at least one base realization, performing: (i) determining whether the computer object includes information on the base realizations; and (ii) if the computer object does not include information on the base realizations, then throwing an exception (pg. 5, par. 1, lines 10-17 to pg. 6, par. 1, lines 1-4).

**Per Claim 4:**

The Bartoletti publication discloses:

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- in response to throwing the exception, preventing each patch associated with at least one realization dependent from the base realization not written to the computer object from being installed (pg. 5, par. 1, lines 10-17 to pg. 6, par. 1, lines 1-4).

**Per Claim 5:**

The Bartoletti publication discloses:

- wherein writing data to the computer object indicating that the state exists comprises: indicating in the computer object that the state defined by the realization exists in the computer if the state exists on the computer, and indicating in the computer object that the state defined by the realization does not exist computer on the computer if the state does not exist on the computer (pg. 6, par. 2, lines 6-17).

**Per Claim 6:**

The Bartoletti publication discloses:

- wherein determining from the computer object whether the state exists on the computer includes determining whether information on one previously considered realization is written to the computer object (pg. 6, par. 2, lines 6-17).

**Per Claim 7:**

The Bartoletti publication discloses:

- wherein each patch is further associated with a patch expression that is capable of processing the computer object to determine whether to add the content from the patch onto the computer (pg. 4, par. 4, lines 1-7 and pg. 5, par. 1, lines 10-15).

**Per Claim 8 (Amended):**

The Bartoletti publication discloses:

- wherein each realization detector includes detector code to determine whether states defined by realizations exist on the computer and to write data to the computer object concerning the existence of the determined states (pg. 5, par. 1, lines 10-17 to pg. 6, par. 1, lines 1-4).

**Per Claim 9 (Amended):**

The Bartoletti publication discloses:

- downloading a plurality of patches to the computer, each including content to add to the computer, wherein the steps of executing a realization routine, writing data to the computer object, and using the computer object to determine whether the patch is compatible with the installed components of the computer is performed on the computer (pg. 6, par. 2, lines 6-17).



**Per Claim 10:**

The Bartoletti publication discloses:

- generating a list of all patches determined to be compatible with the installed components of the computer; and rendering the list of patches on an output device to enable a user to select the content of one or more of the patches on the list to add to the computer (pg. 6, par. 2, lines 17-21).

**Per Claim 11:**

The Bartoletti publication discloses:

- maintaining, at a network administrator system, a plurality of computer objects associated with a plurality of computers on a network, wherein each computer object includes the configuration information on the determined installed components of one computer on the network, and wherein the steps of determining whether the state defined by the realization exists on the computer, writing data to the computer object, and using the computer object to determine whether the patch is compatible with the installed components of the computer on the network is performed for computer objects on the network administrator system (pg. 5, par. 1, lines 10-17 to pg. 6, par. 1, lines 1-4).

**Per Claim 12:**

The Bartoletti publication discloses:

- maintaining a plurality of patches at the network administrator system, wherein determining the states defined by the realizations, writing data to the computer object and using the computer objects to determine whether the patch is compatible with the installed components of the computers on the network is performed for each patch available to the network administrator system (pg. 5, par. 1, lines 10-17 to pg. 6, par. 1, lines 1-4).

**Per Claim 13 (Amended):**

The Bartoletti publication discloses:

- generating a list of all patches determined to be compatible with the installed components of the computers on the network; and rendering the list of patches on an output device to enable a user of the network administrator system to select the content of one or more of the patches on the list to install on one or more of the computers in the network (pg. 6, par. 2, lines 17-21).

**Per Claim 14:**

The Bartoletti publication discloses:

- wherein the content comprises a fix, and wherein the state defined by the realization is capable of indicating whether the computer is susceptible to a bug corrected by the fix (pg. 4, par. 3, lines 1-10).

**Per Claim 15 (Amended):**

The Bartoletti publication discloses:

- wherein determining the at least one of installed hardware and software components comprises: executing a detector program on the computer to process files in the computer to determine installed hardware and software components on the computer (pg. 6, par. 2, lines 6-8).

**Per Claim 16:**

The Bartoletti publication discloses:

- wherein determining the at least one of installed hardware and software components comprises: receiving user input indicating installed hardware and software components on the computer (pg. 6, par. 2, lines 8-17).

**Per Claim 17:**

The Bartoletti publication discloses:

- wherein the user input is received by: displaying a user interface presenting user selectable software and hardware components; and receiving user selection of software and hardware components from the displayed user interface, wherein the received user input

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**indicating the installed hardware and software components comprises the components selected from the user interface (pg. 6, par. 2, lines 8-17).**

**Per Claim 18:**

The Bartoletti publication discloses:

**- wherein reading and writing performed as part of adding content to the computer is restricted to the computer object on the computer (pg. 6, par. 2, lines 6-17).**

**Per Claims 19 (Amended), 20-25, 26-27 (Amended), 28-30, 31 (Amended), 32, 33**

**(Amended) & 34-36:**

These are system versions of the claimed method discussed above (claims 1-18, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Bartoletti.

**Per Claims 37 (Amended), 38-43, 44-45 (Amended), 46-48, 49 (Amended), 50, 51**

**(Amended) & 52-54:**

These are article of manufacture versions of the claimed method discussed above (claims 1-18, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Bartoletti.

**Per Claims 55 (Amended), 56-57 & 58 (Amended):**

These are computer readable medium versions of the claimed method discussed above (claims 1, 7, 8 and 11, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by Bartoletti.

***Response to Arguments***

13. Applicant's arguments filed on 8/10/04 have been fully considered but they are not persuasive.

*In the remarks, the applicant argues that:*

a) Bartoletti fails to disclose all of the elements of Applicant's independent claims.

Applicant has amended independent claims 1, 19, 37 and 55 to clarify that the claimed invention includes the step of downloading one or more realization detectors which are used in conjunction with the computer object on the target system to evaluate systems prior to patch installation. As set forth below, Bartoletti fails to disclose this limitation.

Figure 2 ...

In contrast to Applicant's claimed invention, the Bartoletti reference cited by the Examiner does not include the downloading of a realization detector to the target system. ...

Bartoletti is directed towards a centralized service where the SSDS server checks the list of files and directories manipulated by the patch specifications against the information gathered by the SSDS agent on the target system in order to reach a decision regarding patch installation (see page 6 first full paragraph of Bartoletti).

*Examiner's response:*

a) Examiner strongly disagrees with applicant's assertion that Bartoletti fails to disclose the claimed limitations recited in amended claims 1, 19, 37 and 55. Bartoletti clearly shows each and every limitation in amended claims 1, 19, 37 and 55. Bartoletti teaches the step of downloading one or more realization detectors which are used in conjunction with the computer object on the target system to evaluate systems prior to patch installation (pg. 7, par. 3, lines 6-7). In addition, see the rejection above in paragraph 12 for rejection to claims 1, 19, 37 and 55.

*In the remarks, the applicant argues that:*

b) Bartoletti also fails to disclose the step of writing the state information to the computer object after the state has been detected by the realization detector. As noted above, state information is gathered by the SSDS agent in Bartoletti and reported back to the server.

Accordingly, since Bartoletti fails to disclose all of the elements of Applicant's independent claims (and therefore also fails to disclose all of the elements of the claims which are dependent there), Applicant requests the withdrawal of the rejections directed to claims 1-58 and their allowance.

*Examiner's response:*

b) Examiner strongly disagrees with applicant's assertion that Bartoletti fails to disclose the claimed limitations recited in amended claims 1, 19, 37 and 55. Bartoletti clearly shows each and every limitation in amended claims 1, 19, 37 and 55.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the realization detector does the step of writing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). That is, claims 1, 19, 37 and 55 do not positively recite who/what is doing the step of writing.

In addition, see the rejection above in paragraph 12 for rejection to claims 1-58.

### ***Conclusion***

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication from the examiner should be directed to Qamrun Nahar whose telephone number is (571) 272-3730. The examiner can normally be

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reached on Mondays through Thursdays from 8:30 AM to 6:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki, can be reached on (571) 272-3719. The fax phone number for the organization where this application or processing is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Kakali Chaki*

QN  
November 4, 2004

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